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**IN THE
COURT OF APPEALS OF INDIANA**

WILLIAM V. DICKERSON, JR.,)

Appellant-Defendant,)

vs.)

No. 45A05-0512-PC-754

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Kathleen Sullivan, Judge
Cause No. 45G02-9604-CF-00066

AUGUST 24, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

Defendant-Appellant William V. Dickerson was sentenced on 27 August 1996, to thirty-two years for the Class A felony of attempted murder. A second count, for the Class C felony of battery, was merged into the first count. In determining Dickerson's sentence, the trial court noted the risk that he would re-offend; that he was on probation at the time he committed the instant crime; the nature and circumstances of the crime; and that he had a prior criminal record.

Dickerson filed a motion to correct erroneous sentence on 29 November, 2005, which the trial court summarily denied the next day. On what appears to be his seventh trip to this court, Dickerson raises two issues; however, the State consolidates and restates the issues as whether the trial court's summary denial of Dickerson's motion was proper.

Dickerson first claims in his motion to correct erroneous sentence that the trial court sentenced him beyond the statutory maximum. By statutory maximum, he means the presumptive sentence. Dickerson further claims that correction of his sentence is warranted under *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L. Ed. 2d 403 (2004).

Dickerson filed his motion to correct erroneous sentence pursuant to Ind. Code § 35-38-1-15 and asked for a hearing. However, a hearing was not necessary because the trial court had before it a written memorandum with legal arguments in support of the motion. No evidentiary hearing is necessary because the motion and memorandum are based upon the material records of the court. *Funk v. State*, 714 N.E.2d 746, 752 (Ind.

Ct. App. 1999). Dickerson's memorandum, discounting that material which should have been, and probably was, submitted on direct appeal, fails to show why and how he received a sentence that exceeds, as he contends, the presumptive sentence.

In any event, the resolution of this matter by way of a *Blakely* challenge fails. The use of prior criminal records and the fact that the offense was committed while Dickerson was on probation as aggravating circumstances are exempted from the *Blakely* ruling by *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L. Ed. 2d 435 (2000). See *Ryle v. State*, 842 N.E.2d 320, 322-24 (Ind. 2005).

Judgment affirmed.

SHARPNACK, J., and VAIDIK, J., concur.